

Remarks

Claims 1, 2, 4-6, 9-12, 17-19, 21-23, 26-29 and 34 were acted upon in the aforesaid Office Action. Claims 1, 4-6, 9, 12, 17-19, 22, 23, 26-29 and 34 have been canceled. New claim 35 has been added. Thus, claims 2, 10, 11, 21 and 35 remain in the case.

All claims acted upon in the aforesaid Office Action were deemed anticipated by USP 6,355,069 - DeCarlo, Jr. et al.

The only independent claim remaining in the case is claim 35 which defines the embodiment shown in FIG. 1 of the application.

Claim 35 relates to an assembly for connecting together first, second and third elements (10, 15, 70) of an orthopedic component (5). The first element (10) comprises an elongated member having a circular aperture extending therethrough. The corresponding component of DeCarlo would appear to be elongated stem (16).

The second element (15) of the invention is said to comprise a block member provided with a projection (50) extending therefrom. A corresponding member in DeCarlo would appear to be the bolt member (18).

The third element (70) of the claimed invention is said to comprise an elongated rod having a frusto-conically shaped projection (75) at an end thereof. DeCarlo has a "rod" (20) which is provided with a rounded configuration, rather than a frusto-conically shaped projection.

Referring still to claim 35, the first element (10) is limited to having a frusto-conically shaped entryway (45) at a first end of the element, the entryway (45) forming a first taper and extending to the aperture (70). DeCarlo has a generally frusto-conically shaped entryway (47 in FIG. 4A).

The second element (15) projection (50) is limited to the projection having a first portion with a second taper (40) thereon and a second portion (55) having a frusto-conically shaped recess (65) in a free end thereof. The DeCarlo second member (18) has no projection having a taper thereon nor end portion having a frusto-conically shaped recess in an end portion thereof.

The third element (70) of the invention is said, in claim 35, to be limited to having a frusto-conically shaped end (25) engageable with the second element projection recess (65). This arrangement appears to be missing from DeCarlo.

The second element projection second taper is engageable with the first taper (45) at the end of the aperture (20) of the first element (10), and the external wall of the second element projection second portion (55) is concentrically engageable with an inner wall (60) of the first element aperture (20).

The arrangement claimed is said to affix the second element (15) to the first element (10) and affix the third element (70) to the second element (15).

It appears that DeCarlo does not anticipate claim 35, nor render claim 35 obvious.

Claim 2 depends from claim 35 and makes clear that a taper junction is formed by the interaction of the first end second tapers (40, 45). At neither end of DeCarlo first component (16) is there a taper-to-taper junction.

Claim 10 depends from claim 35 and is further limited to the external wall (55) of the second element projection second portion being deformable so as to be pressure locked against the inner wall (60) of the first element aperture (20). DeCarlo appears to lack that feature.

Claims 11 and 21 depend from claim 10 and would appear to be allowable at least through dependency.

In summary, it appears that claims 35, 2, 10, 11 and 21, as amended, stand well clear of the teachings of DeCarlo and should be deemed allowable thereover.

Allowance of claim 35, 2, 10, 11 and 21 is therefore most respectfully requested.

All claims were rejected on the grounds of non-statutory double patenting with regard to USP 6,669,728. All of the claims in the case which were rejected for non-statutory double patenting have been either canceled or made dependent upon a new claim (claim 35). Accordingly, it appears that claims in this case now differ from the claims of USP '728, by much more than simply differences in language, presentation, etc., and should

not be considered drawn to the same invention for double patenting purposes under 35 USC 101.

In the event that any additional fees may be required in this matter, please charge the same to Deposit Account No. 16-0221.

Respectfully submitted,



Scott R. Foster
Registration No. 20,570
Pandiscio & Pandiscio
470 Totten Pond Road
Waltham, MA 02451-1914
Tel. No. (781) 290-0060

EC2/HAYES2CON.AMD3

HAYES-2 CON